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Supreme Court, U.S.
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Case #_____

SUPREME COURT OF THE UNITED STATES

October Term, 1997

In re JOHN STANTON, Petitioner

PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOHN STANTON
2101 New Hampshire Avenue NW
Washington, DC 20009
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34 pp

QUESTION PRESENTED

Should supervisory power be exercised to order the present district judge to disqualify himself for clearly questionable impartiality (as well as actual bias or prejudice and personal interest in the subject matter) from petitioner's civil rights action in *Stanton v District of Columbia (DC) Court of Appeals*, DDC #95-1952 (no other parties)?

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CITATION

Petitioner's civil rights action is cited as *Stanton v DC Court of Appeals*, 326 USAppDC 404, 127 F3d 72 (1997).

JURISDICTION

Jurisdiction is under US Code §28-1651(a) for a writ of mandamus to order the present district judge to disqualify himself from petitioner's civil rights action in *Stanton v DC Court of Appeals*, DDC Civil #95-1952.

CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS INVOLVED

US Code §28-144: "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding."

CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS INVOLVED

US Code §28-455: "(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party or . . . (4) He knows that he individually . . . has a financial interest in the subject matter in controversy . . . or any other interest that could be substantially affected by the outcome of the proceeding."

SUPREME COURT OF THE UNITED STATES

October Term, 1997

In re **JOHN STANTON,**
Petitioner

PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

STATEMENT OF THE CASE

Petitioner is an attorney suspended indefinitely from the practice of DC law by respondent DC Court of Appeals, which operates an unconstitutional DC Bar disciplinary process and construes the DC Bar Rules of Professional Conduct to require counsel for the accused in any criminal prosecution "[to] assume the role of an advocate for a client who desired to plead guilty . . . includ[ing] advocating in open court . . . to convince a

judge of the voluntariness of a guilty plea."[1] Petitioner remains under suspension because respondent DC Court of Appeals will not tolerate his beliefs that "a lawyer's advocacy of a guilty plea . . . denies the accused his right[] to freedom from involuntary self-incrimination"[2] and that counsel for the accused in criminal prosecutions should not "advocate on behalf of a guilty plea in any situation"[3] unless the client after consultation expressly requests such advocacy.

With no right and no authority to construe the DC Bar disciplinary rules to require advocacy for guilty pleas,

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[1] *In re Stanton*, 589 A2d 425, 426 (DC 1991) *cert denied* 502 US 1098, 112 SCt 1178 (1992).

[2] *Stanton v DC Court of Appeals*, 326 USAppDC 404, 408, 127 F3d 72, 76 (1997). "In the present case . . . [petitioner] argues that certain of DC's Rules of Professional Conduct . . . deprive DC Bar members of rights of free expression protected by the First Amendment . . . In the procedural count[ ] of his complaint, [petitioner] claims that the composition and procedures of the DC [Bar] Board on Professional Responsibility violate the due process clause," *Id* at 406-407, 127 F3d at 74-75.

[3] *In re Stanton*, 682 A2d 655, 656 (DC 1996), *cert denied* 118 SCt 67 (1997).

respondent DC Court of Appeals ignores and disregards constitutional claims against either this unconstitutional requirement or the unconstitutional DC Bar disciplinary process. Respondent's repeated failures and refusals in petitioner's reinstatement actions to consider these claims caused him to file the district court civil rights action now before the present district judge.

As DC Bar president-elect, president, and governing board member from 1990 to 1994 the present district judge was associated closely with respondent DC Court of Appeals shortly before his appointment to the district court. As DC Bar president the present district judge boasted of "the public service role that is such an important part of our calling."[4]

The present district judge granted respondent DC Court of Appeals a protective order denying all discovery and then quickly dismissed the action by abstention

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[4]*Washington Lawyer*, May/June 1992 at 7.

"because of the pending proceeding in the DC judicial system"[5] despite petitioner's allegation that respondent DC Court of Appeals ignores and disregards his claims and will not consider them. Petitioner appealed the abstention to the DC Circuit and during the pendency of the appeal respondent DC Court of Appeals again ignored and disregarded his claims while denying reinstatement for "his inability to draw workable distinctions between his philosophical beliefs and his ethical obligations to his clients"[6] as defined by respondent's construction of the disciplinary rules.

After the remand from appeal the present district judge summoned the parties for a status conference. When petitioner asked to have the case reassigned, the present

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[5]*Stanton v DC Court of Appeals*, 326 USAppDC at 406, 127 F3d at 74. Petitioner filed the district court action during his third reinstatement action after respondent DC Court of Appeals indicated that it again would ignore and disregard his constitutional claims.

[6]*In re Stanton*, 682 A2d at 658. Following the end of that proceeding, the DC Circuit remanded petitioner's civil rights action for further proceedings.

district judge refused and complained about a phone call petitioner had made the day before:

> Just don't leave any more telephone messages telling me what you want me to do. I was compelled by that message that you left yesterday to attach it to a notice and put it in the file.[7]

The present district judge then explained why his prominent recent association with respondent DC Court of Appeals as president of the DC Bar should be seen as insignificant in terms of petitioner's due process right to an impartial tribunal:

> [T]he president of the DC Bar has nothing to do with the disciplinary system of the DC Bar, which is a separate agency reporting directly to the DC Court of Appeals.[8]

Following the conference, the present district judge

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[7]Conference transcript at 3-4. The present district judge "*sua sponte* ordered that a telephone message from [petitioner], received today, be photocopied and made a part of this order and duly filed in the record of the case." The message was petitioner's request that the present district judge "get off the case."

[8]Conference transcript at 3.

again denied all discovery "pending the outcome of [respondent's next] motion to dismiss"[9] which when filed asserted facts in dispute or at issue as grounds for dismissal of petitioner's action.

Petitioner filed a motion under §§28-144 and 28-455 to disqualify the present district judge for obviously questionable impartiality, actual bias or prejudice, and personal interest in the subject matter of the action. Respondent DC Court of Appeals disputed none of petitioner's points for disqualification but argued merely that a judge's rulings cannot serve as a basis for disqualification.

Convinced that the present district judge would delay as long as possible any ruling on the disqualification motion, petitioner sought from the DC Circuit a writ of mandamus ordering disqualification. While the DC Circuit deliberated, the present district judge denied petitioner

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[9]Affidavit for disqualification, Appendix at 6A.

amendment of his complaint under Rule 15(a) of the Federal Rules of Civil Procedure,[10] although respondent DC Court of Appeals has filed no responsive pleading, because "allowing the amendment would mean requiring [respondent] to file an answer."[11] Petitioner reported the denial of his right to amend to the DC Circuit and provided the appellate court with a copy of the district court order.

The DC Circuit denied relief with the comment that, "Assuming mandamus is the proper vehicle for obtaining recusal, petitioner has not shown a clear and undisputable right to such relief"[12] because "the district court's rulings

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[10]Rule 15(a): "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court orders otherwise."

[11]District court order, Appendix at 9A.

[12]DC Circuit order, Appendix at 11A.

are not a basis for judicial disqualification."[13]

The present petition is for the relief deferred by the district court and denied by the DC Circuit.

ARGUMENT

The DC Circuit's denial of relief sanctions or condones drastic departures from the accepted and usual course of judicial proceedings calling for exercise of supervisory power to secure due process of law between petitioner and respondent DC Court of Appeals.

The accepted and usual course of judicial proceedings is to dismiss an action only after "taking all the facts alleged as true and giving the plaintiff all

[13]DC Circuit order, Appendix at 11A, citing *Liteky v United States*, 510 US 540, 114 SCt 1147, (1994), which stated more precisely that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion," *Id* at 555, 114 SCt at 1157.

reasonable inferences from those facts."[14] The present district judge dismissed petitioner's action on the pretext that the pending proceeding in the DC judicial system would "afford an adequate opportunity in which to raise the federal claims"[15] he dismissed, taking petitioner's facts alleged as untrue and giving him no reasonable inferences from those facts.

The accepted and usual course of judicial proceedings is to make findings fairly and impartially on the facts alleged. The present district judge refuses to make findings of fact on petitioner's allegations and denies him all means and methods of discovery of proof as provided by the Federal Rules of Civil Procedure.

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[14]*Maljack Productions v Motion Picture Association of America*, 311 USAppDC 224, 226, 52 F3d 373, 375 (1995).

[15]For abstention, a rigid three-part test must be passed: "First, a federal court may dismiss a federal claim only when there are ongoing state proceedings that are judicial in nature; second, the state proceedings must implicate important state interests; third, the proceedings must afford an adequate opportunity in which to raise the federal claims," *Hoai v Sun Refining & Marketing Co*, 275 USAppDC 397, 400, 866 F2d 1515, 1518 (1989).

The accepted and usual course of judicial proceedings is to honor the rule that a party "may amend the party's pleading once as a matter of course at any time before a responsive pleading is served."[16] The present district judge denies the undeniable right to amend at any time before service of a responsive pleading because allowing amendment would mean requiring respondent DC Court of Appeals to file an answer to petitioner's complaint.

As recent president of the DC Bar the present district judge presided over the lawlessness of respondent's bar disciplinary process, and this recent, prominent association with respondent DC Court of Appeals makes him unwilling to find the facts alleged in petitioner's complaint. He has a personal interest in maintaining an impression or image that as DC Bar president he served the cause of justice nobly in a "public service role."

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[16]Rule 15(a), Federal Rules of Civil Procedure.

Findings and revelations that he presided over a lawless DC Bar disciplinary process will tarnish that image.

The present district judge will not disqualify himself despite the statutory command that "such judge shall proceed no further,"[17] nor will he say why the affidavit for his disqualification is not sufficient. When petitioner's message that he should get off the case "compelled" him "to attach it to a notice and put it in the file" the present district judge made a formal record of defiance and determination to resist disqualification, stay on the case, deny or at least delay as long as possible any findings on the facts alleged by petitioner's complaint, and subvert petitioner's action.

No reasonable, disinterested, objective observer aware of the present district judge's association with respondent DC Court of Appeals can fail to doubt or question his impartiality after considering his dismissal of

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[17]US Code §28-144.

petitioner's action, his denial of discovery altogether before and after dismissal, his explanation that as DC Bar president he had "nothing to do with the disciplinary system of the DC Bar," his order formally defying petitioner's request for recusal, and his order denying amendment of petitioner's complaint so that respondent DC Court of Appeals is not required to file an answer.

The DC Circuit's comment that petitioner has not shown "a clear and indisputable right" to have the present district judge disqualified because "the district court's rulings are not a basis for judicial disqualification" overlooks the circuit's previous observation that judicial rulings "can be evidence of an extrajudicial bias or prejudice"[18] which the present district judge incurred in favor of respondent DC Court of Appeals before his appointment to the district court.

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[18]*United States v Barry*, 291 USAppDC 68, 81, 938 F2d 1327, 1340 (1991).

"The traditional use of the writ in aid of appellate jurisdiction . . . has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction,"[19] and disqualification is necessary to confine the present district judge, who hopes to delay petitioner's action until some intervening event moots the controversy and preserves the present inconclusive state of the record, to cases where he can exercise his prescribed jurisdiction lawfully.

The DC Circuit questions whether "mandamus is the proper vehicle for obtaining recusal,"[20] but some circuits say "[i]nterlocutory review of disqualification issues on petitions for mandamus is both necessary and appropriate,"[21] particularly "under circumstances involving alleged conflict of interests and/or appearance of

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[19] *Roche v Evaporated Milk Association*, 319 US 21, 26, 63 SCt 938, 941 (1943)

[20] DC Circuit order, Appendix at 11A.

[21] *In re School Asbestos Litigation*, 977 F2d 764, 778 (CA3 1992).

impropriety under §455,"[22] and at least one circuit says mandamus is "the only recourse available"[23] to challenge a denial or unreasonable delay of disqualification under US Code §28-455. Review of the present district judge's defiance and deferral of disqualification would be in aid of appellate jurisdiction by dispelling the DC Circuit's uncertainty on the propriety of mandamus for the purpose of obtaining disqualification of any judge whose impartiality is reasonably questioned.

The DC Circuit's indulgence of the present district judge's imposition of a virtual stay on petitioner's action, the present district judge's posture of defiance, and the necessity of interlocutory review for implementation or enforcement of §28-455(a) are exceptional circumstances

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[22] *In re Aetna Casualty & Surety Co*, 919 F2d 1136, 1143 (CA6 1990) (*en banc*).

[23] *Hook v McDade*, 89 F3d 350, 353 (CA7 1996), *cert denied* 117 SCt 718 (1997), see also *United States v Horton*, 98 F3d 313, 316 (CA7 1996) (denial of recusal under §28-455(a) "must be appealed immediately by application for writ of mandamus or it is waived").

indicating that relief for the apparent, if not the actual, bias or prejudice of the present district judge cannot be obtained in any other form or from any other court.

CONCLUSION

Because petitioner's right to prosecute his action in a fair tribunal is clear and indisputable, the present district judge clearly appears to be biased or prejudiced in favor of respondent DC Court of Appeals, and disqualification under §28-455(a) for clearly apparent bias or prejudice cannot be obtained in any other form or in any other court, a writ in aid of jurisdiction should issue ordering the present district judge to disqualify himself.

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APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JOHN STANTON, *
Plaintiff

* **Civil #95-1952 (JR)**

DISTRICT OF COLUMBIA
COURT OF APPEALS,
Defendant *

PLAINTIFF'S AFFIDAVIT FOR DISQUALIFICATION

Plaintiff states under penalty of perjury:

(1) I am an attorney under indefinite suspension from practice by order of defendant DC Court of Appeals because of my beliefs that advocacy for guilty pleas by counsel for the accused in criminal prosecutions is unconstitutional and that defendant has no right and no authority to require such advocacy in the practice of DC law.

(2) Defendant DC Court of Appeals ignores and disregards my constitutional freedom of expression claim against the requirement of advocacy for guilty pleas and my constitutional due process claims against defendant's

DC Bar disciplinary regime.

(3) When it became obvious in my last reinstatement action that defendant DC Court of Appeals again would ignore and disregard my claims I filed the complaint in this lawsuit in October 1995 for declaratory relief, specifically for judgment declaring defendant's rulemaking in violation of constitutional freedom of expression in requiring advocacy for guilty pleas and in violation of constitutional due process in delegating excessive discretionary authority to an unpaid, unsworn, disciplinary agency acting in secrecy with no public participation in its constitution or operations.

(4) This case initially was assigned to District Judge Sullivan, a recent member of defendant DC Court of Appeals. Because Judge Sullivan's impartiality was clearly questionable, I asked him to disqualify himself, and he referred the case to the Calendar Committee, which reassigned it to Judge Robertson.

(5) I was not aware when notified of the

reassignment of Judge Robertson's recent background as president of defendant's DC Bar and anticipated no unusual or extraordinary reaction when in November 1995 I served on defendant DC Court of Appeals a discovery request for admissions.

(6) Defendant had moved for dismissal on the ground of abstention, arguing that in the reinstatement action I would have an opportunity to raise the constitutional claims defendant already had ignored and disregarded as alleged in the complaint. The request for admissions required defendant to address the allegation.

(7) Defendant DC Court of Appeals moved for a protective order denying all discovery with no particular or specific demonstration of need or justification for such an extraordinary request, and in fact defendant so moved simply to suppress the allegations of the complaint and to frustrate proof of the sordid facts alleged.

(8) Judge Robertson granted defendant a protective order denying all discovery and then abstained

from exercising jurisdiction over the complaint and dismissed the complaint to give defendant DC Court of Appeals "the first opportunity" to hear and consider the allegations of unconstitutional rulemaking defendant had ignored and disregarded and refused to hear and consider, as alleged in the complaint, which Judge Robertson was under a legal duty to take as true in all respects.

(9) Judge Robertson's conscious, deliberate motives in denying all discovery and in dismissing the complaint on the pretext that defendant DC Court of Appeals would hear and consider the allegations were to delay and to deny any hearing and consideration and to protect defendant DC Court of Appeals from any constitutional accountability or responsibility for violating the rights to freedom of expression and to due process of law in DC Bar disciplinary actions.

(10) While this case was on appeal from Judge Robertson's dismissal defendant DC Court of Appeals denied my reinstatement and again ignored and

disregarded my constitutional claims, giving them no hearing or consideration despite the pendency of this declaratory action.

(11) On remand from appeal this case was called for a status conference before Judge Robertson in November 1997, when he said he would not require any response to the request for admissions "until there is an answer," again intending to suppress for as long as possible any discovery of proof the facts alleged in the complaint and any factual findings on the allegations. Judge Robertson also said at the status conference that as DC Bar president he "never had anything to do with any disciplinary matters," a misrepresentation obvious to any reader of the DC Bar periodical *Washington Lawyer*, which reported on his involvement in disciplinary matters generally, if not in particular cases, during his tenure as DC Bar president.

(12) On 4 December 1997 I served a notice to depose the executive attorney and legal advisor of

defendant's disciplinary agency in a second effort to obtain discovery of proof of the facts alleged in the complaint. Again defendant moved for a protective order which Judge Robertson granted immediately, again denying all discovery "pending the outcome of defendant's motion to dismiss" although no motion to dismiss had been filed and allowing me no opportunity to be heard in opposition to the second protective order request.

(13) On 23 December 1997 defendant DC Court of Appeals filed a motion to dismiss arguing that "in addition to the allegations in the complaint, the court may take into account matters of public record, orders, and items appearing in the record of the case" in ruling on the motion, making it a motion for summary judgment.

(14) By denying discovery Judge Robertson intends to deny me any fair, reasonable opportunity to present evidence and material pertinent to such a motion under Rule 56, Federal Rules of Civil Procedure. Specifically, there is a question of fact whether defendant

DC Court of Appeals applies or may apply to reinstatement actions standards for fitness to practice DC law dissimilar to standards for fitness applied in disciplinary actions. Judge Robertson intends to deny discovery of any proof of facts on this issue, accept defendant's argument on the issue as factually indisputable, and enter judgment for defendant without meaningful factfinding, the same method he employed in dismissing the complaint previously when he ruled with no discovery of proof and with no factfinding that defendant should have "the first opportunity" to hear and consider the allegations of the complaint when in truth and fact defendant ignored and disregarded the allegations before and after Judge Robertson's abstention.

(15) Judge Robertson is determined to short-circuit factfinding on the complaint and enter judgment for defendant as expediently as possible because his determination is to cultivate, maintain, and perpetuate an image of the DC Bar, over which he presided shortly

before his judicial appointment, as an organization of the highest standards of integrity dedicated to truth, justice, and the public interest, and findings that the DC Bar in fact operates a lawless disciplinary regime would be dramatically in contrast with that image. Judge Robertson cannot be true to his oath to administer justice in this case.

_____
JOHN STANTON

Jurat

John Stanton appeared before me 31 December 1997 and subscribed under penalty of perjury to this affidavit.

_____
Notary Public
District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN STANTON,	:	
Plaintiff,	:	
v.	:	Civil Action No. 95-1952
DISTRICT OF COLUMBIA COURT OF APPEALS,	:	FILED MAR 17 1998 NANCY MAYER-WHITTINGTON, CLERK
Defendant.	:	

ORDER

Before the court is plaintiff's superseding motion to amend his complaint [30] and defendant's opposition thereto.

Defendant notes correctly that plaintiff's proposed changes to Counts I & II are "minor and cosmetic." Plaintiff apparently wishes to combine the allegations in Counts I & II into one single theory of due process deprivation. An amendment to the pleadings for this purpose is unnecessary – plaintiff's current pleadings do not prohibit him from arguing a single theory of due

process deprivation – and, since allowing the amendment would mean requiring defendant to file an answer, it is certainly not required by justice. See Fed. R. Civ. P. 15(a).

The more important part of plaintiff's proposed amended complaint would add a revised Count III. The Court of Appeals has affirmed the dismissal of Count III. Stanton v. District of Columbia, No. 96-7041 (Oct. 17, 1997). The court's holding was that only a facial challenge to the D.C. Bar's rules could survive the jurisdictional limits of the Rooker-Feldman doctrine. The proposed amendment attack's defendant's "construction and administration" of the Bar rules. This is not a facial challenge to the rules but rather a challenge to their application.

Accordingly, it is this 17th day of March, 1998,

ORDERED that plaintiff's superseding motion to amend his complaint [#30] is denied.

JAMES ROBERTSON
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 98-5034 September Term, 1997
95cv01952

In re: John Stanton,
Petitioner

BEFORE: Tatel and Garland, Circuit Judges

ORDER

Upon consideration of the petition for writ of mandamus and the motion to require answer to complaint and to vacate order staying discovery, which is construed as a supplement to the mandamus petition, it is

ORDERED that the petition be denied. Assuming mandamus is the proper vehicle for obtaining recusal, petitioner has not shown a clear and indisputable right to such relief. See *In re Barry*, 946 F2d 913, 914 (DC Cir 1991) (per curiam). Moreover, the district court's rulings are not a basis for judicial disqualification. See *Liteky v United States*, 510 US 540, 554-55 (1994).

Per Curiam

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
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